IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No. 148 of 2003
with
CIVIL APPLICATION NO.2791 OF 2003
AND
APPEAL FROM ORDER NO.135 OF 2003
with
CIVIL APPLICATION NO.2671 OF 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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CHIMANBHAI SOMABHAI PATEL AND ANOTHER
Versus
CHATURBHAI GORDHANBHAI PATEL AND OTHERS

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Appearance :
MR YOGESH S LAKHANI for Appellants No.1 and 2
MR AB MUNSHI for Respondent No.1
MR PRAKASH K JANI for Respondent No.2
None for Respondent(s) : 3 - 6.

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 28/11/2006

ORAL JUDGMENT

Since the point involved in both the appeal from orders being common, both these appeals are being disposed of by this common order. So far as Appeal from Order No.135 of 2003 is concerned, the appellants of the aforesaid appeal are the original defendants Nos.4 to 7 of Special Civil Suit No.716 of 2000. The aforesaid civil suit is filed by one Chaturbhai Gordhanbhai Patel, who is the respondent No.1 in these appeals. Defendants Nos.1 and 2 of the aforesaid suit have also filed appeal being Appeal from Order No.148 of 2003 challenging the order passed by the trial Court below Exhibit 5 in the said suit. The plaintiff has filed the aforesaid suit for getting the decree for specific performance of the suit agreement. The case of the plaintiff is that the plaintiff is doing the business of building construction in the City of Vadodara. The defendants Nos.1 and 2 are the real brothers and defendant No.3 is daughter of their uncle. The property described in paragraph 2 of the plaint is the ancestral property of defendants Nos.1, 2 and 3. But on partition the property came into the share of defendant No.3 and defendants Nos.1 and 2 have also executed irrevocable power of attorney in favour of the defendants. Defendant No.3 as well as father of defendant No.3 – one Rambhai Patel had agreed to sell the suit property for Rs.98,40,000/- and agreement to that effect was also executed on 17.5.1999. At the time of entering into the agreement Rs.5,20,000 was also paid. The plaintiff was always ready and willing to perform his part of the contract. It is also the say of the plaintiff that even the possession was also handed over by defendant No.3 on 19th May 1999 and that is

how he is in possession of the suit property. As per the averments made in the plaint, the plaintiff came to know that defendants Nos.1 and 2 have transferred the property by way of sale to defendants Nos.4 to 7. On this and on such other grounds the aforesaid suit has been filed in which it has been prayed that a declaration may be given to the effect that there is a valid agreement in favour of the plaintiff executed by defendant No.3 dated 17th May 2000 and 19th May 1999. A decree for specific peformance is also prayed in connection with the said agreement. A declaration is also prayed for that sale deed executed by defendants Nos.1 and 2 in faovur of defendants Nos.4 to 7 maybe held to be illegal and void. In the aforesaid suit the plaintiff gave an application for interim injunction with the prayer that during the pendency of the suit the defendants maybe restrained from disturbing the possession of the plaintiff gave an application for interim injunction with the prayer that during the pendency of the suit the defendants maybe restrained from disturbing the possession of the plaintiff. An injunction was also prayed that defendants maybe restrained from acting further by way of transfer or sale or dealing with the property in any manner during the pendency of the suit.

The said suit is resisted by the defendants on various grounds. The learned trial Judge after hearing the parties allowed the injunction application and the trial Court restrained the defendants from disturbing the possession of the plaintiff of the suit property till the disposal of the suit. The defendants are also prevented from executing any sale deed, gift deed, mortgage deed or agreement to sell or any type of transfer till the final disposal of the suit.

Being aggrieved by the aforesaid order, original defendants Nos.1 and 2 have filed Appeal from Order No.148 of 2003. So far as the

purchasers of the land in question, they have also filed separate appeal being Appeal from Order No.135 of 2003. Both the aforesaid appeals are being disposed of by this common judgment and order.

The learned Single Judge while entertaining the application for interim injunction passed the following order on 27th June 2006:-

> "Rule. To be heard the main matter.
>
> The learned advocates Mr A.B.Munshi, Mr P.K. Jani and Mr P.M. Thakkar waive service on behalf of the respective opponents.
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> Pending the appeal, there shall be interim relief in terms of paragraph 2(B) on condition that the parties to the suit shall maintain status quo as to the possession and user of the land in question. Neither of the parties shall create a third party right of interest in the land in question or any part thereof."

Accordingly, the order of the trial Court is stayed on the aforesaid condition by the learned Single Judge by which the parties are directed to maintain the status quo as to the possession and user of the land.

At the time of hearing of these appeals it is pointed out by learned advocates appearing for both the sides that since the aforesaid order was passed by this Court as back as on 27th June 2003 by which the parties are directed to maintain status quo and it is suggested that this appeal from order maybe disposed of on the basis of the interim order passed by the learned Single Judge with a request that the suit maybe expedited. Considering the facts that since last more than three years the order of the learned Single Judge is prevailing and since it is agreed between the parties, with the consent of the parties it is directed that pending the suit the parties to the suit shall maintain status quo. It is agreed that

neither of the parties shall create any third party interest in the suit property. The aforesaid order shall remain in force till the aforesaid suit is decided. The learned trial Judge will try to dispose of the suit by the end of 2007.

Accordingly, both the appeals are disposed of. It is clarified that whatever observations made are made for the purpose of deciding interim injunction applicants and ultimately the learned trial Judge has to decide the suit on its own merits.

It is pointed out that some other cognate matters are pending and the learned Civil Judge is required to hear and decide the same along with the present suit. However, it is for the parties to apply for the same and if and when such application is made the learned Judge shall decide the same accordingly.

In view of the disposal of the main appeals, no orders are required to be passed in Civil Applications Nos.2791 of 2003 and 2671 of 2003 and the same are disposed of accordingly.

(P.B.MAJMUDAR, J.)

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